1996), Appendix B- Final Rules. implementing the local competition provisions of the Act have been appealed and those rules relating to costing and pricing have been stayed by the United States Court of Appeals for the Eighth Circuit. *Iowa Utilities Board et al. v. FCC*, No. 96-3321, Order Granting Stay Pending Judicial Review (8th Cir. Oct. 15, 1996). The order also stays the "MFN" rule. The provisions of the FCC order and rules not subject to stay are adhered to in the Arbitrator's Report and Decision and this order. Those provisions which are subject to stay do not require compliance pending resolution of the underlying appeal. This Commission is free, therefore, to disregard those specific federal requirements. The stay does not preclude reference, however, to underlying rationale and analysis contained in the federal order for whatever value it may have on its merits.

Having considered the Arbitrator's Report and Decision, the Arbitration Interconnection Agreement and accompanying requests for approval filed by the parties to this arbitration, the entire record herein, and all written and oral comments made to the Washington Utilities and Transportation Commission ("Commission"), the Commission makes the following findings and conclusions:

II. FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate in the public interest the rates, services, facilities and practices of telecommunications companies in the state.

2. The Washington Utilities and Transportation Commission is designated by the Telecommunications Act of 1996 as the agency responsible for arbitrating and approving interconnection agreements between telecommunications carriers, pursuant to Sections 251 and 252 of the Act.

3. This arbitration and approval process was conducted pursuant to and in compliance with the Commission's *Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996*, Docket No. UT 960269, June 27, 1996. The arbitrator's adoption of "last best offer" arbitration in the Fourth Procedural Order was reasonable and consistent with the authority delegated to the arbitrator in the Commission's Order on Arbitration Procedure, June 28, 1996. No party objected to adoption of "last best offer" arbitration in the Fourth

Procedural Order.

4. On November 8, 1996, pursuant to the Commission's Order On Arbitration Procedure in this docket, the arbitrator issued an Arbitrator's Report and Decision resolving the disputed issues between the parties to this proceeding, MFS and USWC. *See* Appendix A.

5. On December 9, 1996, the parties submitted a signed Arbitrated Interconnection Agreement to the Commission for approval in part. The Arbitrated Interconnection Agreement properly incorporates the decisions of the arbitrator as to the disputed issues. To the extent the final provisions vary from specific decisions of the arbitrator, pursuant to agreement of the parties, the provisions are treated as negotiated provisions.

6. The Commission has reviewed and analyzed the staff recommendation, the Arbitrator's Report and Decision, the Arbitrated Interconnection Agreement, the filings of the parties, and the record herein, including the oral comments made at the open meeting. The Commission hereby adopts and incorporates by reference the findings and conclusions of the Arbitrator's Report and Decision.

7. At an open meeting on January 6, 1997, the Commission adopted the staff recommendation that the Arbitrated Interconnection Agreement be approved as submitted.

8. USWC made reference in its filings to the "competitive checklist" requirements of Section 271 of the Act. 47 USC § § 271(c)(2)(B) This order makes no findings with regard to the requirements of that section and no determination as to whether USWC is in compliance.

III. CONCLUSIONS OF LAW

1. The arbitrated provisions of the Arbitrated Interconnection Agreement meet the requirements of Section 251 of the Telecommunications Act of 1996, including the regulations prescribed by the Federal Communications Commission pursuant to Section 251 which have not been stayed, and the pricing standards set forth in Section 252(d) of the Act.

2. The negotiated provisions of the Act do not discriminate against a telecommunications carrier not a party to the agreement and are consistent with the public interest, convenience, and necessity.

3. The Arbitrated Interconnection agreement is otherwise consistent with Washington law and with the orders and policies of this Commission.

ORDER

IT IS ORDERED that:

1. The Arbitrated Interconnection Agreement for the State of Washington between MFS Intelenet, Inc., and U S WEST Communications, Inc., is approved.

2. The prices contained in the Agreement are interim prices, subject to replacement by prices adopted in the Commission's generic cost and price proceeding, Docket No. UT 960369 et al.

3. In the event that the parties revise, modify or amend the Agreement approved herein, the revised, modified, or amended Agreement shall be deemed a new negotiated agreement under the Telecommunications Act and shall be submitted to the Commission for approval, pursuant to 47 USC § § 252(e)(1) and relevant provisions of state law, prior to taking effect.

DATED at Olympia, Washington and effective this day of January 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHARON L. NELSON, Chairman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

▸ Creation Info

Shirley Burrell was the last to edit this document, on 03/13/98.

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and U S WEST Communications, Inc. Pursuant to 47 USC Section 252.	)	DOCKET NO. UT-960323 ARBITRATOR'S REPORT AND DECISION

I. INTRODUCTION

A. Procedural History

On February 8, 1996, MFS Communications Company, Inc. ("MFS") requested negotiations with U S WEST Communications, Inc. ("USWC") for interconnection under the terms of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56, *codified at* 47 USC § 151 *et seq.* (1996)(the "1996 Act" or "the Act").

On June 24, 1996, MFS timely filed with the Washington Utilities and Transportation Commission ("Commission") and served on USWC, a petition for arbitration pursuant to 47 USC § 252(b)(1). The matter was designated Docket No. UT-960323. On June 28, 1996, the Commission entered an Order on Arbitration Procedure appointing the undersigned as the arbitrator for this proceeding and establishing certain procedural requirements.

USWC filed its response to the petition. Petitions to intervene were filed by AT&T Communications of the Pacific Northwest, Inc. and Telephone Ratepayers Association for Cost Based and Equitable Rates. The petitions were denied in the Arbitrator's Second and Third Procedural Orders respectively.

"Final offer" arbitration was adopted for this arbitration pursuant to the Arbitrator's Fourth Procedural Order. In preparing the arbitration report in this matter, the arbitrator will select between the parties' last proposals as to each unresolved issue, selecting the proposal which is most consistent with the requirements of state and federal law and Commission policy. The arbitrator will choose either an entire proposal, or choose between parties' proposals on an issue-by-issue basis. In the event that neither proposal is consistent with law or Commission policy, the arbitrator will render a determination in keeping with those requirements.

Discussion

The parties are reasonably close on the issue of call termination and on the proposed rates. Under 47 USC § 252(d)(2), terms and conditions for reciprocal compensation are not to be construed as just and reasonable unless they provide for the mutual and reciprocal recovery of costs of transport and termination. Such costs must be based on a reasonable approximation of the additional costs of terminating such calls. State commissions may not engage in rate regulation proceedings to determine the costs of transport and termination with particularity and may not require carriers to maintain records of the cost of the calls.

MFS has established that its switch is reasonably comparable in geographical scope to a USWC tandem. While there questions about the functional comparability of the MFS switch to a tandem switch, particularly as to trunk to trunk capability, the record supports a conclusion that the MFS switch, like a tandem, performs the function of aggregating traffic from widespread remote locations with low traffic volumes. The record also indicates that, in order to terminate USWC calls on its network, MFS will incur additional costs over costs that would be incurred by simple end-office switch termination. While the MFS position is based on approximations, the Act expressly provides that a "reasonable approximation" of costs is to be the basis of determinations, and that costs may not be determined with "particularity."

2. Enhanced Service Provider (ESP) Call Termination

MFS Position

MFS opposes establishing any unique treatment of ESPs in this agreement. MFS argues that there is no basis in the Act or in other applicable law for such a differentiation and that such traffic has not previously been separated or segregated. To date, the FCC has treated ESP traffic like other local traffic. MFS argues that this is appropriate because the traffic is typically local in nature. In MFS' view, USWC is attempting to prejudge issues which will be addressed by the FCC in its access charge reform proceeding.

USWC Position

USWC seeks to exempt any traffic originated or terminated by enhanced service providers from the reciprocal compensation arrangements of the agreement. This position is based on a recognition of the unique status of this traffic, which is currently exempt from paying Part 69 access charges. USWC expects the FCC to address this exemption in its forthcoming access charge reform proceeding. Until that time, USWC believes it is appropriate to exclude ESPs from coverage under the reciprocal compensation provisions.

Contract Provision(s)

JPS, V.D.1.e, p. 12 (Reciprocal Traffic Exchange)

Arbitration Decision

The arbitrator adopts the MFS position.

Discussion

It is premature to change the treatment of ESPs at this time.

3. Late Payment Charges

MFS Position

MFS has proposed language for the contract which would assess late payment charges in the event switched access usage data is not submitted in a timely fashion and if, as a result, the receiving party is delayed in billing interexchange carriers. The proposal also provides liability if the data is not submitted within 90 days. The liability provision states:

> In the event the recording party [e.g. USWC] has not submitted such data in the proper format by the 90th day following the original due date, billings for the traffic associated with such traffic will be deemed "lost" and the recording party shall be liable to the receiving party for the amount of the lost billings. JPS, V.K.7, p. 17.

MFS argues that the provision is commercially reasonable and designed to allow parties some confidence in dealing with IXCs or other third parties, that it will protect parties against loss, and that it will ensure compliance with the time frames provided in the agreement.

USWC Position

USWC opposes the MFS provision on the ground that such an arrangement is not currently in place with any other co-carrier (independent LEC) with whom USWC interconnects. USWC argues that the provision is entirely too severe and may cause substantial revenue loss disproportionate to any revenue loss that might occur.

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 13th day of January, 1998.

CASE NO. 97-1210-T-PC

MCI TELECOMMUNICATIONS CORPORATION
Petition for arbitration of unresolved issues for the interconnection negotiations between MCI and Bell Atlantic - West Virginia, Inc.

COMMISSION ORDER

On September 19, 1997, MCI Telecommunications Corporation (MCI), filed a petition requesting Commission arbitration, pursuant to §252(b) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§151 et seq. (TA96), of open issues from MCI's negotiations with Bell Atlantic - West Virginia, Inc. (BA-WV) for an agreement dealing with, among other things, interconnection and access to unbundled network elements (UNEs).[1] Also on September 19, 1997, the Consumer Advocate Division of the Public Service Commission (CAD) filed a petition to intervene in this proceeding.

In its September 19, 1997 petition, MCI identified numerous unresolved issues for the Commission to arbitrate. However, in a letter filed with the Commission on September 24, 1997, MCI indicated that BA-WV had agreed to use a region-wide agreement, negotiated between MCI and Bell Atlantic, as a template and that only the following four (4) issues would need to be arbitrated:

(1) MCImetro Access Transmission, Inc.'s[2] access to BA-WV's Directory Assistance (DA) data base.

(2) BA-WV's provision of certain information needed by switch

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[1]Section 252(b)(4) of TA96 provides that decisions on petitions for arbitration must be rendered within nine (9) months after the initial request for negotiation of an interconnection agreement. MCI requested negotiations on April 14, 1997. MCI Petition, at 5. Therefore, the Commission's decision must be rendered by January 13, 1998.

[2]It appears that the reference to MCImetro Access Transmission, Inc. was erroneous, since the petition and all subsequent papers were filed by an affiliate -- MCI. All references therefore are to MCI.

("FAM/SAG").

(3) Whether Internet-bound traffic is local traffic for purposes of compensation.

(4) Location of interconnection points.

By Order entered October 7, 1997, the Commission established a procedural schedule for this proceeding. Among other things, the Commission's order established an October 17, 1997 deadline for petitions to intervene, required pre-hearing direct and rebuttal testimony to be filed by October 31 and November 7, 1997, respectively, and set a hearing for November 14, 1997.

On October 14, 1997, and in accordance with §252(b)(3) of TA96, BA-WV filed a response to MCI's petition for arbitration. BA-WV initially argued that, with respect to the first, second and fourth issues, MCI's petition failed to set forth sufficient information to allow the Commission to determine just what issue MCI wanted the Commission to arbitrate. BA-WV Response, at 1-4. That argument made, BA-WV set forth additional arguments specific to each issue. With respect to MCI's request for access to BA-WV's DA data base, BA-WV contends that the access to DA already mandated by the Commission in its May 16, 1997 order addressing the Company's Statement of Generally Available Terms and Conditions for Interconnection, etc. (SGAT) fully meets BA-WV's obligations under TA96. Id., at 2. As for information needed by switch, BA-WV argues that all of the information by switch identified by MCI is already readily available to MCI and thus there is nothing for the Commission to arbitrate. Id., at 3-4.

BA-WV further asserted that, with respect to the location of interconnection points (IPs), Section 4 and Schedule 4 of the Company's SGAT expressly provides for the locations suggested by MCI (i.e., tandem switch, end office switch, or "telco closet"), and others. Therefore, BA-WV claims, there is no arbitrable issue regarding IP locations Id., at 4-5. With respect to the final issue (e.g., the character of Internet-bound traffic), BA-WV asserts that MCI does not explain why such traffic should be deemed local and further asserts that MCI's own trade group -- the Association for Local Telecommunications Services (ALTS) -- has raised the very same issue before the FCC precisely because such traffic is interstate in nature and the FCC's jurisdiction is exclusive. Id., at 5-6. BA-WV asks the Commission to find that Internet traffic is jurisdictionally interstate and leave it to the FCC to determine what compensation, if any, is due between local exchange carriers (LECs) when they are both involved in originating an Internet call that is carried beyond the local calling area of an Internet service provider (ISP). Id., at 6.

On October 15, 1997, AT&T Communications of West Virginia, Inc. (AT&T) filed a petition to intervene in this proceeding. Also on October 15, 1997, BA-WV and MCI filed a joint motion seeking modification of the Commission's procedural schedule. The parties requested that the hearing should be canceled and that the Commission base its decision upon the parties' written comments and briefs. The motion indicated that both

Commission Staff (Staff) and CAD concurred.

On October 21, 1997, BA-WV filed a reply to AT&T's petition to intervene in this proceeding, opposing AT&T's intervention for a number of reasons.

On October 30, 1997, shortly after filing its response, BA-WV moved to dismiss MCI's petition for arbitration.

On October 31, 1997, BA-WV and MCI filed pre-hearing direct testimony with the Commission. BA-WV filed the direct testimony of Donald E. Albert and Gale Y. Given. MCI filed the direct testimony of Chet Kudtarkar and Stuart H. Miller. The other parties did not file pre-hearing direct testimony. Likewise on October 31, 1997, AT&T filed its response in opposition to BA-WV's motion to deny it intervenor status.

By Order entered November 4, 1997, the Commission granted the parties' joint motion to modify the procedural schedule in this proceeding and canceled the November 14, 1997 hearing. The Commission further granted BA-WV's motion to deny AT&T's efforts to intervene in this proceeding, although AT&T was allowed to participate in this proceeding on a limited basis.

On November 7, 1997, BA-WV, MCI and Staff filed pre-hearing rebuttal testimony. BA-WV and MCI's rebuttal testimony was provided by the same individuals who provided direct testimony. Staff filed the rebuttal testimony of Dannie L. Walker.

On November 12, 1997, MCI filed its response in opposition to BA-WV's motion to dismiss MCI's petition for arbitration.

On December 1, 1997, both BA-WV and MCI filed initial briefs, in accordance with the procedural schedule established in the Commission's October 7, 1997 order. Staff did not file an initial brief.

On December 4, 1997, Staff filed a letter advising the Commission that it would not be filing a reply brief.

On December 7, 1997, both BA-WV and MCI filed reply briefs, in accordance with the Commission's procedural schedule.

The Commission has not ruled upon BA-WV's motion to dismiss MCI's petition for arbitration to-date.

DISCUSSION

I. BA-WV's Motion to Dismiss MCI's Petition for Arbitration.

As an initial matter, the Commission must rule upon BA-WV's motion to dismiss MCI's petition for arbitration.

A. BA-WV's Arguments.

In its October 30, 1997 motion to dismiss, BA-WV requests that the Commission dismiss MCI's petition on the three (3) issues which the Company previously claimed, in its response, were not sufficiently identified in MCI's petition (i.e., DA data base, switch information and IP location). As grounds for its motion, BA-WV argued that MCI's petition failed to meet the pleading requirements of TA96 and therefore failed to state a claim upon which relief could be granted. Specifically, BA-WV argues that, under TA96 §252, a petitioner for arbitration has an affirmative legal duty "at the same time it submits the Petition" to provide the state commission with all relevant documentation concerning (1) the unresolved issues and (2) the position of each of the parties. BA-WV Motion, at 1, citing 47 U.S.C. §252(b)(2)(emphasis original). BA-WV claims that MCI's petition fails to meet this requirement and that this point is underscored by MCI's filing in Delaware, which involved a supplemental pleading setting forth in detail the issues for arbitration which was filed after the original petition was filed but within the petitioning period (e.g., 135-160 days after requesting negotiations). Id., at 2. In addition, BA-WV notes that the Commission has, on numerous occasions, decided matters in accordance with the West Virginia Rules of Civil Procedure. Id., at 3, citing "Commission Order," In re: Bell Atlantic - West Virginia, Inc., Case No. 96-0651-T-T (Dec. 27, 1996)(applying summary judgment standards set forth in W. Va. R. Civ. P. 56). Under W. Va. R. Civ.. P. 12(b)(6) and (c), BA-WV notes, a party is entitled to judgment if the complaint is legally insufficient. As a final matter, BA-WV asserts that the pleading and procedural requirements ensure that a party has a fair opportunity to be heard, that MCI's allegedly deficient petition deprived BA-WV of that opportunity, and that the Company is not trying to achieve an overly technical resolution of the proceeding.

B. MCI's Arguments.

The arguments in MCI's November 12, 1997 response in opposition to BA-WV's motion are fairly straightforward -- namely that its petition set forth the issues before the Commission in sufficient detail. MCI initially notes that BA-WV's stalling tactics in signing off on the regional template for an interconnection agreement forced MCI to file a petition identifying many more issues than it believed would (or should) need to be arbitrated. MCI Opposition, at 2. Next, MCI claims that its petition, and the materials attached to it, discussed all relevant information upon which the Commission can rely to rule upon the three (3) issues challenged by BA-WV. Id., at 4-7. For example, access to BA-WV's DA data base was discussed in Tab 4 of the petition, as well as on page 68 of the petition. Id., at 5-6. Information needed by switch, MCI asserts, was discussed at pages 22-25 of the petition. MCI Opposition, at 6-7. Finally, MCI contends that the issue of IP location was discussed at pages 8-12 of the petition, as well as in Tab 1 attached to the petition. Id., at 7. In addition, MCI notes that the supplemental filing in Delaware referenced by BA-WV was required by a specific rule of that state's commission. Id., at 3.

C. Commission Decision and Rationale.

The Commission concludes that BA-WV's motion to dismiss MCI's petition for arbitration should be denied for the following reasons. First, BA-WV overlooks the fact that this proceeding is, unlike most contested cases before the Commission, an arbitration. Arbitrations are generally considered less formal proceedings than contested cases or judicial proceedings. Wheeling Gas Co. v. Wheeling, 8 W.Va. 320 (1875); see also 2A Michie's Jur., Arbitration and Award, §11 at 41 (1993); 4 Am. Jur.2d, Alternative Dispute Resolution, §180 at 207 (1995). Accordingly, the Commission should be less strict in applying pleading standards in arbitration proceedings. Second, while BA-WV is correct in noting that the Commission has decided matters in accordance with the State's rules of civil procedure, courts generally will construe complaints liberally with respect to motions seeking dismissal for failure to state a claim under W. Va. R. Civ. P. 12. Doe v. Wal-Mart Stores, 479 S.E.2d 610, Syl. Pt. 1 (W. Va. 1996); Garrison v. Herbert J. Thomas Memorial Hospital, 438 S.E.2d 6, Syl. Pt. 2 (W. Va. 1993). Liberal construction of MCI's petition seems especially applicable since dismissal would effectively bar refiling of the petition since the statutory limitations period -- i.e., 135 to 160-days following request for negotiation -- has expired.

Nor is the Commission persuaded that MCI's petition is so bereft of detail regarding the nature of the issues submitted for arbitration that BA-WV is denied a fair opportunity to respond to MCI's claims or that the Commission cannot resolve the issues. MCI cites the relevant portions of its petition discussing the issues being submitted for arbitration, its position and that of BA-WV, and the relief it desires. In addition, MCI provided voluminous documentation it asserted was relevant concerning these issues. MCI's petition therefore appears to comply with 47 U.S.C. §252(b)(2)(A) sufficiently to withstand BA-WV's motion.

II. The Parties' Unresolved Issues Submitted for Arbitration.

A. Location of Interconnection Points.

The issue presented to the Commission is how many points of interconnection (POI) MCI must establish in BA-WV's network.[3] MCI wants to

[3]The parties' agreement defines "interconnection point" and "point of interconnection." An interconnection point (IP) means the switching, Wire Center, or other similar network node in a party's network at which that party accepts local traffic from the other party. Put another way, the IP is the "first switch on the other side of each party's network," where the other party can first measure the traffic coming from the other carrier's network, on a usage basis. Kudtarkar Dir., at 13 Fn. 17. Under the interconnection agreement, BA-WV's IPs include (1) any BA-WV end office for the delivery of traffic terminated to numbers served out of that end office, or (2) any access tandem office for the delivery of traffic to numbers served out of any end

limit the number of POIs it must establish to "at least one [1] POI in each of the LATAs in which [MCI] originates local traffic and interconnects with [BA-WV]." MCI Initial Br., at 3 (emphasis added). In contrast, BA-WV wants MCI to establish "at least one [1] POI in each of the [BA-WV] access tandem serving areas in which [MCI] originates local traffic and interconnects with [BA-WV]." Id. (emphasis added). MCI's proposal could result in it being responsible for as few as one (1) POIs in the State; BA-WV's proposal would result in MCI being responsible for at least nine (9) POIs in the State.

1. MCI's Arguments.

MCI claims that TA96 obligates BA-WV, as the ILEC, to provide MCI interconnection with its network at any technically feasible point within BA-WV's network. MCI Initial Br., at 5, citing 47 U.S.C. §251(c)(2). Moreover, in interpreting this provision of TA96 the FCC expressly stated ". . . that requesting carriers have the right to select points of interconnection at which to exchange traffic with an [ILEC] . . . ." Id., citing "First Report and Order," In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 & 95-185, FCC 96-325 (Rel. Aug. 8, 1996), ¶220 & Fn. 464 (FCC Interconnection Order). Pursuant to these provisions, MCI claims that it, rather than BA-WV, has the right to select the POI on BA-WV's network. Both the FCC and Congress concluded that CLECs must be able to interconnect at a point or points which ensure its opportunity to provide efficient, competitive service in order to enable CLECs to compete effectively with ILECs for local service. TA96 and the FCC Interconnection Order "have the effect" of prohibiting ILECs from dictating the number and location of POIs to a requesting carrier. MCI Initial Br., at 5. Moreover, MCI claims, BA-WV's SGAT does not determine where CLECs may interconnect -- unless the CLEC chooses to accept the SGAT rather than negotiate its own interconnection agreement or choose another

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office that subtends the access tandem office. MCI Initial Br., at 4. MCI's IPs include any MCI switch for the delivery of traffic terminated to numbers served out of that switch. In short, BA-WV's IPs are either end offices or access tandem offices; MCI's IPs are its switch(es).

Points of interconnection or POIs are the physical connections between the parties' networks at the IP, and mark the boundaries of each company's network. The parties' agreement defines POI as the "physical point that establishes the technical interface, the test point, and the operational responsibility hand-off between the parties for the local interconnection of their networks." Each company is responsible for network engineering and maintenance on its side of the POI. MCI Initial Br., at 4.

CLEC's agreement. Id., at 5-6.[4] Therefore, BA-WV cannot require MCI to designate at least one (1) POI in each of BA-WV's access tandem service areas (ATSAs).

Alternatively, MCI contends that a Commission order requiring MCI to deliver traffic to at least one IP within each BA-WV ATSA and also imposing a reciprocal, symmetrical requirement that BA-WV deliver traffic to an IP at the MCI switch which serves as both a tandem and an end office would be just and reasonable, provided BA-WV pays for transport to the MCI switch for all of its calls. Id., at 6-8.

b. BA-WV's Response.

BA-WV argues that MCI fundamentally misunderstands the FCC's, and TA96's, use of the term "at any technically feasible point" in claiming that it, not BA-WV, has the right to select the POI on BA-WV's network at any technically feasible point . . . ." BA-WV Reply Br., at 12. BA-WV claims that the FCC focused on the "technical feasibility" of interconnecting at various network points when it addressed the interconnection issue. Id., citing FCC Interconnection Order, ¶210. The FCC did not establish, or even consider, any rule that a CLEC may unilaterally establish a POI at any point of its choosing across the entire length and breadth of an ILEC's network. As BA-WV puts it, if the Commission has the authority to require a CLEC to establish at least one POI in each LATA, then the Commission plainly has the authority to require a CLEC to establish at least one POI in each ATSA. Id., at 12.

By claiming that requiring a CLEC to establish a POI in each ATSA will impose higher costs on CLECs and create additional administrative burdens, BA-WV claims that MCI is doing nothing more than attempting to shift such costs to BA-WV and its customers. Id. BA-WV asserts that if MCI chooses to design a network that utilizes fewer switches and more transport, it should not be allowed to complain that it is disadvantaged because of the transport costs it incurs. Such costs are the direct result of MCI's network deployment decisions and should not be shifted to BA-WV and its customers. Id., at 12-13.

2. BA-WV's Arguments and MCI's Response.

a. BA-WV's Arguments.

BA-WV summarizes MCI's proposal concerning the location of IPs as follows. First, MCI proposes to designate at least 1 POI at any technically feasible point in each LATA in which it originates local traffic and interconnects with BA-WV. Second, MCI may request additional POIs at any other technically feasible points it chooses. Finally, MCI is willing to establish at least 1 IP in each ATSA for termination of local

[4]MCI also suggested that a contrary conclusion by the Commission would be preempted because it conflicts with federal law. MCI Initial Br., at 6.

traffic to BA-WV's local traffic to MCI's local customers. BA-WV Initial Br., at 11, citing Kudtarkar Dir., at 13.

BA-WV argues that MCI fails to explain why the interconnection provisions of BA-WV's SGAT are inadequate. To underscore its point, BA-WV notes that in Staff's testimony regarding this issue, Mr. Walker testified that "I do not know what MCI is dissatisfied with." Id., at 12, citing Walker Reb., at 5. In a footnote, however, BA-WV notes that its witness speculated that the issue may be whether MCI can unilaterally determine where BA-WV must deliver traffic on MCI's network. BA-WV believes that MCI is proposing that it has the exclusive right to decide to accept traffic from BA-WV at only a single point in a LATA, even if the LATA has multiple ATSAs. Albert Dir., at 16. BA-WV provides an example based on MCI placing its POI in Charleston rather than at all the access tandems in the Charleston LATA. Under MCI's proposal, BA-WV would have to transport a call made by a customer in Lewisburg all the way to Charleston in order to deliver the call for termination to an MCI customer likewise in Lewisburg. Such a proposal would be costly and inefficient and should not be adopted, BA-WV argues. BA-WV Initial Br., Fn. 11, citing Albert Dir., at 16-17.

BA-WV proposes that, once MCI begins serving customers in a particular ATSA, it should be required to establish at least 1 IP in that ATSA. BA-WV claims that its proposed interconnection architecture is reasonable and fair, is the model upon which every interconnection agreement throughout the Bell Atlantic region is based, and is the way BA-WV and interexchange carriers (IXCs) interconnect. MCI presents no reason for carving out an exception in this State.

b. MCI's Response.

After noting that BA-WV accurately summarizes MCI's request regarding IP reciprocity, MCI claims that it is willing to transport calls from its switch to wherever the customer is, and pay for every element along the way, including transport from MCI's switch to BA-WV's access tandem. MCI Reply Br., at 11. MCI claims BA-WV is unwilling to do the same. Instead of accepting treatment equal to that offered to MCI, BA-WV proposes that MCI deliver traffic to each and every ATSA and asks that MCI either duplicate the infrastructure already in place or compensate BA-WV for transport to each tandem. Id. MCI summarizes the difference between the two parties position as follows:

> MCI has agreed to pay the cost of transporting our customers [calls] to BA-WV's network. BA-WV will not however transport its customers calls to MCI's network. Rather BA-WV wants its transport obligation for its calls to end at its tandems.

Id., at 12.

MCI claims that BA-WV's proposal is discriminatory since it imposes extra costs on competitors because BA-WV is unwilling to transport calls on a reciprocal basis. Second, it is anti-competitive because it imposes BA-

WV's inefficient network design rather than allowing competition to bring about efficient changes in network design. Third, it requires excessive capital expenditures in order to provide facilities-based service in the State which hinders the ease of entry and growth of competition. MCI Reply Br., at 12. MCI contends that it is BA-WV, not MCI, that has failed to state its case for reciprocity of IPs, relying on legal feints rather than credible factual and policy-bases arguments. Id., at 12-14.

3. Staff's Position.

Staff agrees with BA-WV's position. Staff claims that it does not know "what MCI is dissatisfied with." Walker Reb. at 5.

4. Commission Decision and Rationale.

The Commission concludes that MCI makes the better case for its position and the Commission directs the parties to use MCI's proposed interconnection agreement language.

BA-WV errs in arguing that the FCC did not consider or establish any rule that a CLEC may unilaterally establish a POI at any point of its choosing across an ILEC's entire network. In fact, MCI made an argument identical to that raised in this proceeding in its comments to the FCC. The FCC noted that:

> MCI . . . urges the Commission to require incumbents and competitors to select one point of interconnection (POI) on the other carrier's network at which to exchange traffic. MCI further requests that this POI be the location where the costs and responsibilities of the transporting carrier ends and the terminating carrier begins.

FCC Interconnection Order, ¶214. In its response, the FCC made it clear that "we reject Bell Atlantic's suggestion that we impose reciprocal terms and conditions on incumbent LECs and requesting carriers pursuant to [47 U.S.C. §251(c)(2)]." Id., ¶220. The FCC further stated: "Of course, requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2)." Id., Fn. 464 (emphasis added). Thus, the FCC appears to have considered the arguments raised by MCI in this proceeding and to have resolved those arguments in MCI's favor.

Moreover, requiring CLECs, such as MCI, to invest in more infrastructure than they wish could constitute a barrier to market entry in violation of 47 U.S.C. §253(a), since it could make it financially and operationally more burdensome for CLECs to begin operating in West Virginia. The Commission has already expressed its reluctance to approve artificial pricing structures designed to compel new entrants to make infrastructure investment decisions that would not otherwise be cost-efficient. See "Commission Order," In Re: Bell Atlantic - West Virginia, Inc., et al., Case No. 96-1516-T-PC, et al. (April 21, 1997), at 75-76 (Public Version)(4/21 Order). The same rationale applies to BA-WV's

arguments in this proceeding. If MCI wants to establish only one (1) POI in each LATA, it has that right. However, MCI's decision will have economic consequences. If MCI establishes only one POI in each LATA -- which is the point on its network at which it accepts local traffic from BA-WV -- then MCI must be prepared to pay BA-WV for local traffic transported by BA-WV from MCI's IP (BA-WV's access tandem) to MCI's POI (MCI's switch). See 47 C.F.R. §§51.701-.702; see also FCC Interconnection Order, ¶¶1039-40.

In addition, the Commission will clarify one point in its 4/21 Order and 5/16 Order that will have another economic consequence given MCI's network infrastructure -- namely the rate BA-WV must pay MCI for terminating local traffic it delivers to MCI's network. In its original SGAT, BA-WV proposed two (2) different rates for termination of traffic -- one rate applicable when local traffic is delivered to an end-office, and a second, higher rate applicable when local traffic is delivered to a local serving wire center or access tandem. See BA-WV SGAT, Exhibit A (Revised Feb. 10 , 1997).[5] The Commission concludes that, in a situation in which a CLEC maintains only 1 POI per LATA, it may charge only the lower, "end office" rate for termination of local traffic delivered to that POI. In support of its conclusion, the Commission notes that the FCC defined "termination" as "the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." 47 C.F.R. §51.701(d) (emphasis added). Where only 1 POI is established per LATA, the Commission considers that facility -- practically and legally -- to be the equivalent of an end office switch.

B. Access to BA-WV's DA Database.

The issue here is whether -- in complying with the FCC's requirement that ILECs provide access to DA -- BA-WV should be required to provide MCI with access to BA-WV's underlying directory data information in its master DA database, and any other supporting databases, in a readily accessible electronic format so that MCI may populate its own database. In other words, is BA-WV required to provide its DA database, and update it as frequently as it updates its own, so that MCI may create and market its own DA database.

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[5] In the AT&T arbitration proceedings, AT&T argued that the higher "tandem" rate should apply when BA-WV delivers traffic for termination to a CLEC's network because of differences in the CLEC's network architecture. See 4/21 Order, at 75 (Public Version). While the Commission rejected the "blended" termination rate proposed in BA-WV's SGAT, the Commission never addressed the issue whether, in the situation where a CLEC has but one switch in a local calling area, that switch should be considered a "tandem" or an "end office," for purposes of reciprocal compensation for termination of local traffic. Id., at 75-76.

1. MCI's Arguments and BA-WV's Response.

a. MCI's Arguments.

MCI claims that it does not desire to purchase or utilize BA-WV's DA service but rather seeks access to the underlying directory data information contained within BA-WV's DA database. MCI Initial Br. at 9-10. Further, MCI claims that it does not seek the proprietary search engines or any other proprietary information contained within BA-WV's DA database but rather seeks an initial download of the underlying directory data information, copied onto magnetic tape with electronically transmitted updates provided on the same day that BA-WV prepares updates for its own system. Such action is necessary, MCI claims, if it is to have access to all directory data that is necessary for it to provide the same level of DA/operator service that BA-WV provides to its customers. Id., at 8.

MCI challenges BA-WV's assertion that its offering of read-only access to its DA database is consistent with the FCC Interconnection Order. MCI contends that the access BA-WV proposes to provide is not readily accessible, nor does it measure up to "true" read-only access. MCI claims that "true" read-only access allows a CLEC to copy the underlying data contained in the ILEC's DA database without changing or editing the original data. Without such access, MCI is left with DA database information that is far inferior to what BA-WV enjoys. Moreover, MCI will incur additional costs in provisioning DA service to its customers and will not have control over the accuracy or timeliness of the directory data information. Id., at 10.

Furthermore, MCI contends that read-only access is not sufficient under the FCC's rules or TA96. MCI relies heavily upon the following FCC statement in support of its arguments:

> We further find that a highly effective way to accomplish non-discriminatory access to directory assistance, apart from resale, is to allow competing providers to obtain read-only access to the directory assistance database of the LEC providing access. Access to such databases will promote seamless access to directory assistance in a competitive local exchange market. We note also that incumbent LECs must provide more robust access to databases as unbundled network elements under §251(c)(3).

MCI Initial Br., at 10-11 citing "Second Report and Order," In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et al., CC Docket Nos. 96-98, et al., FCC 96-333 (Rel. Aug. 8, 1996), ¶140[6] (FCC DP Order). Based on the above-quoted language, MCI claims that read-only access cannot be the only kind of

[6]MCI erroneously cited ¶143 of the FCC DP Order as the source of the quoted passage. BA-WV repeats MCI's error by also citing ¶143 as the source of the FCC's pronouncement on this issue. See BA-WV Reply Br., at 3.

access ILECs must provide to their DA databases and therefore BA-WV must provide access to the underlying directory data information itself. Id., at 11.

As further support for its contention, MCI notes that TA96 requires BA-WV to provide MCI with non-discriminatory access to unbundled network elements (UNEs), and that such elements include "subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service." MCI Initial Br., citing 47 U.S.C. §251(c)(3). DA databases are unbundled elements. Id., citing FCC Interconnection Order, ¶¶537-38 & Fn. 1314. Since the FCC concluded that LECs must provide "more robust" access to such databases than is afforded by read-only access, MCI argues, the bare minimum (i.e. read only access) is not sufficient. Id., at 11-12. MCI also cites 47 U.S.C. §251(b)(3), as well as other provisions of the FCC DP Order in support of its claim that a read-only access to BA-WV's DA database is not sufficient. Id., at 12-13, citing 47 U.S.C. §251(b)(3); FCC DP Order, ¶¶130, 133, 141-142.

MCI argues that it is technically feasible for BA-WV to provide its basic DA data in readily accessible electronic format. Id., at 14. Many LECs across the country provide data in this fashion without difficulty and that the Virginia State Corporation Commission recently ordered Bell Atlantic to provide basic DA data in readily accessible electronic format as requested by MCI. Id. (no citation). MCI then proceeds to refute a "laundry list" of difficulties associated with providing DA data likely to be advanced by Bell Atlantic. MCI Initial Br., at 14-16.

MCI acknowledges that Bell Atlantic offers several access methods into its DA service but complains that, regardless of the access method, it would be forced to retrain all of its DA operators on the new system and to develop a compatible system. All of this would cost MCI a great deal of money. In addition, MCI would have to operate two separate and distinct systems, causing undue dialing delays and other inefficiencies. Lastly, MCI would be "held hostage" to the Bell Atlantic system capabilities, making it impossible to offer new and enhanced services unless the Bell Atlantic system already had the capabilities developed by MCI. Thus, West Virginia consumers may not be able to take advantage of services MCI would offer in other states. Id., at 16.

b. BA-WV's Response.

MCI cites no proper legal basis for its argument that BA-WV must download a copy of its DA database in order to provide MCI with access to DA. First, the provision of TA96 cited by MCI, §251(c)(3), only requires BA-WV to provide MCI with nondiscriminatory access to network elements -- it does not give MCI the right to take possession and ownership of the database itself. BA-WV Reply Br., at 2. Second, MCI's claim that the FCC's rulings support its demand is based on a blurring of the FCC Interconnection Order -- which defines an ILEC's unbundling obligations -- and the FCC DP Order -- which requires all LECs to provide nondiscriminatory access to telephone numbers, operator services, directory

assistance, and directory listings, with no unreasonable dialing delays. Id., at 2.

BA-WV claims that the directory assistance and the directory listings databases are distinct and separate, with different information, capabilities and purposes.[7] The FCC recognizes this fact and deals with each of the two databases, and the specific access requirements that apply to each, very differently. With respect to the DA database, the FCC concluded that "a highly effective way to accomplish non-discriminatory access to directory assistance, apart from resale, is to allow competing providers to obtain read-only access to the directory assistance databases of the LEC providing access." Id., at 3, citing FCC DP Order, ¶143 [sic]; see also FCC Interconnection Order, ¶538.

The FCC's decision concerning the obligation to provide access to directory listings databases is quite different, BA-WV argues. With respect to this database, the FCC concluded that ". . . Section 251(b)(3) requires LECs to share subscriber listing information in 'readily accessible' tape or electronic format. . . ." BA-WV Reply Br., at 2, citing FCC DP Order, ¶141. BA-WV claims that the requirement that a LEC actually transfer its directory listing database to other carriers, as opposed to allowing them access to the DA database, serves a different purpose -- namely enabling CLECs to publish their own print or electronic directories. Id., at 3. Requiring a physical transfer of the directory listings information is reasonable since a competitor cannot publish a telephone directory unless it has all of the directory listings at one time -- when it publishes its directory. Accessing the directory listings database on a per query basis would not be practical. The FCC, BA-WV argues, recognized that fact and therefore required an actual transfer of the directory listings database. Id., at 3-4.

The ILEC's obligation to provide access to its directory assistance database is fully satisfied, BA-WV contends, by its providing competitors with the ability to (1) connect to that database and (2) use that database by reading it and then supplying the requested directory assistance information to customers. Id., at 4. BA-WV asserts that the FCC was very clear in drawing a distinction between "directory listings"-- the published telephone directory information that must be made available to CLECs on magnetic tape -- and "directory assistance service" which must be made available to CLECs on a read-only access basis. Id., at 5. Thus, neither TA96 nor the FCC's interconnection or dialing parity orders require BA-WV to create for MCI a new DA database and then transfer ownership and control of that database to MCI.

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[7]The DA database is the interactive, real-time database that allows for queries by DA operators to provide telephone numbers to customers who call either 4-1-1 or 555-1212. In contrast, the directory listings database is the print white pages database that is used in typesetting a printed telephone directory. BA-WV Reply Br., at 2.

BA-WV also challenges MCI's factual arguments. First, the Company argues that MCI fails to explain exactly why per query access to BA-WV's DA database does not make it "readily accessible." Per query access to the database, BA-WV argues, is exactly the same access that BA-WV's own DA operators have and MCI's claim of inferior accessibility therefore is false. Second, MCI's claim that per query access would leave it with information inferior to that which BA-WV enjoys is untrue. Id., at 6, citing Albert Reb., at 11-12. Third, MCI does not provide any support for its claim that per query access would cause it to incur additional costs in provisioning DA service to its customers. Nor, BA-WV claims, does MCI attempt to harmonize its assertion with the fact that the per query access rates in BA-WV's SGAT were calculated on a TELRIC basis, which is presumably the same cost that an efficient provider would incur in providing such service. Id. Finally, BA-WV argues that MCI's claim that per query access denies it control over the accuracy or timeliness of the directory data information itself is unsubstantiated and illogical since, even under MCI's proposal, all DA data -- both the initial download and the subsequent updates -- would still be provided by BA-WV. Id., at 7.

2. BA-WV's Arguments and MCI's Response.

a. BA-WV's Arguments.

BA-WV argues that the Commission should limit access to its DA database to that required by the Commission's prior order rejecting BA-WV's proposed SGAT. See "Commission Order," In Re: Bell Atlantic - West Virginia, Inc., et al. Case No. 96-1516-T-PC, et al. (May 16, 1997)(5/16 Order). That order approved the Company's proposal that CLECs would be provided with access to BA-WV's DA database on a "per query" basis, but also directed BA-WV to modify its SGAT to provide CLECs with a complete directory listing in electronic, read-only format and with daily updates of additional customers, deleted customers and other modifications to the existing customer database. BA-WV Initial Br., at 2, citing 5/16 Order, at 43.

MCI is now dissatisfied with the Commission's May 16, 1997 order, BA-WV argues, and wants the Company to also provide an initial download of its directory data, contained within BA-WV's DA database, copied onto magnetic tape with electronic updates on the same day they are prepared by BA-WV. Id., citing Miller Dir. at 5. BA-WV claims that MCI's request goes well beyond TA96's requirements and sound public policy. The Company does not dispute that 47 U.S.C. §251(c)(3) requires BA-WV to provide nondiscriminatory access to its network elements, and that DA is a network element. Rather, BA-WV contends, the question is whether it must, in the name of providing access to its DA database, actually turn that database over to MCI. Id., at 3. BA-WV claims that the access provided in accordance with the Commission's May 16, 1997 order fully meets TA96's requirements and that nothing further is required.

BA-WV first claims that the FCC made it clear that an ILEC's duty to provide access consists of the duty to provide a connection to a network element. Id., citing FCC Interconnection Order, ¶¶268-269. This duty

requires the ILEC to furnish a connection that allows for database "query" and database "response" -- it does not, as MCI contends, give CLECs the right to take ownership of the database itself. Id., citing FCC Interconnection Order, ¶484 & Fn. 1127.

Not only is MCI's demand for its DA database contrary to what is required under TA96 and the FCC's requirements, BA-WV argues, it is also unreasonable as a matter of public policy. Id., at 5, citing Albert Reb., at 12. BA-WV claims that it has made a substantial investment to create its DA database. If MCI wants to provide competing DA service, BA-WV argues, it can and should make the investments to do so itself. Furthermore, BA-WV contends that the Commission's May 16, 1997 order approving per query access to BA-WV's DA database should be presumed to be reasonable and that MCI has failed to meet its burden to overcome that presumption. Id., citing United Fuel Gas Co. v. Public Service Commission, 174 S.E.2d 304, 311 (W.Va. 1969). Moreover, BA-WV points out that the Commission's May 16, 1997 order rejected the argument that the CLECs should be provided with BA-WV's entire DA database, after noting that this database contains numerous proprietary functions and features which go beyond providing CLECs with access to its DA database. Id., citing 5/16 Order, at 43. Thus, the Commission should reaffirm its May 16, 1997 decision and join with the commissions in Pennsylvania, New Jersey and Washington, D.C. in denying MCI's requested "data dump" of BA-WV's directory assistance data. Id. & Fn. 6, citing Opinion and Order, Docket No. A-310236F0002 (Pa. P.U.C., Dec. 19, 1996), at 60-61; Award of Arbitrator, Docket No. T096080621 (N.J. B.P.U., Dec. 19, 1996), at 27-28; TAC 4, Order No. 8 (D.C. P.S.C., Dec. 26, 1996), at 28.

b. MCI's Response.

MCI contends that the SGAT is irrelevant to the Commission's arbitration of an interconnection agreement between it and BA-WV. MCI Reply Br., at 3. MCI claims that it never anticipated using the SGAT to obtain services, that if it had felt the SGAT were sufficient for its purposes it would not have undergone lengthy and costly contract negotiations, and finally, that if Congress felt that SGATs were sufficient, arbitrations would not have been envisioned by TA96. Once a CLEC has chosen to arbitrate an agreement, it has a right to the terms decided upon in the arbitration.

Second, MCI controverts BA-WV's claim that it is seeking the relinquishment of BA-WV's DA database, claiming that it is merely seeking a copy of the database. Moreover, MCI claims that BA-WV is trying to re-define "access" to mean "view only". Id., at 3-4. MCI also claims that duplication of BA-WV's DA database only increases reliability by having a back-up alternative and the ability to serve consumers in the event there is a failure in BA-WV's ability to continue providing such a crucial service. Id., at 4. MCI further notes that the Maryland commission ordered BA-WV's affiliate to provide access to its underlying directory assistance data base information on a "data dump" basis, as requested by MCI. Id., citing Case No. 8731, Phase (b), Order No. 73725 (Oct. 9, 1997), at 3.

MCI concedes that BA-WV developed its DA data base at considerable cost but contends that this fact should reinforce the Commission's determination to compel BA-WV to share such data with MCI. MCI Reply Br., at 4-5. It was West Virginians, rather than BA-WV, that paid for creation of the database and they should be allowed to benefit from that investment. Moreover, MCI claims that BA-WV acquired its database as an incidental benefit of having a monopoly franchise to provide telecommunications in its service area. MCI and other carriers are not afforded similar circumstances and, as a result, denial of BA-WV's DA database will potentially harm West Virginians by imposing additional costs on CLECs who seek to create similar databases. Id., at 5. Since the DA information that BA-WV possesses is the most accurate and reliable currently available, MCI claims that it would not be good public policy to suggest that competitors should rely "on less accurate sources of information and then dispense that information to customers". Id., at 6.

In addition, MCI claims that BA-WV seeks to mislead the Commission by suggesting that what it is seeking is unusual. However, MCI claims that the electronic exchange of updated directory data is the norm rather than the exception and that the only distinction between what MCI seeks and what is currently the norm is that MCI wants to start on a "level playing field". Id. This, it claims, is easily accomplished by the Commission ordering BA-WV to provide the current DA data base in an electronic format "just as was ordered in Virginia". Id. (no citation).

3. Staff Position.

Staff's witness finds MCI's arguments to be "quite compelling." Walker Reb., at 5. Staff agrees that the more MCI has reasonable access to such information from BA-WV, and all other carriers with West Virginia-specific DA information, the better the chances are that MCI will be able to bring innovative services to subscribers within the State. An increase in the number of consumer operations is one of the prime benefits of competition and thus the public interest, Staff asserts, is served by adopting MCI's position. Id. Staff recommends that the Commission should order BA-WV to timely provide the DA database access which MCI requests, and should require MCI to reciprocate fully by providing BA-WV with similar access to its DA database. Each carrier would have to pay the reasonable incremental costs of providing such access. Moreover, Staff recommends that the parties work out timing issues associated with the provision of such access. Id., at 5-6.

4. Commission Decision and Rationale.

The Commission concludes that MCI's request for a "data dump" download of BA-WV's DA database, with electronic updates thereof, should be denied. The Commission generally agrees with BA-WV's observation that MCI's arguments are based on a "blurring" of two different FCC orders -- one dealing with dialing parity under 47 U.S.C. §251(b)(3), the other dealing with access to network elements under 47 U.S.C. §251(c)(3).

As an initial matter, the Commission notes that it addressed similar arguments in its May 16, 1997 order in BA-WV's SGAT proceeding. See 5/16 Order, at 41-43. Despite MCI's arguments to the contrary, the Commission's order is not irrelevant -- it is Commission precedent. The fact that MCI did not anticipate providing local service pursuant to the SGAT does not alter this fact. Moreover, MCI had the opportunity to participate in the SGAT proceeding and did not seek reconsideration of this issue. While the Commission is not prepared to hold that MCI is barred from re-litigating this issue now, MCI must show that the Commission's prior decision regarding access to BA-WV's DA database was unreasonable or erroneous. MCI fails to make such a showing.

There is no dispute regarding whether directory assistance and its underlying database are network elements to which "nondiscriminatory access" must be provided -- they are. However, MCI erroneously claims that the FCC requires more than "read-only" access to BA-WV's DA database by quoting ¶140 of the FCC DP Order out of context. The quoted passage was part of the FCC's discussion regarding nondiscriminatory access to DA and directory listings. The FCC interpreted the phrase "nondiscriminatory access to directory assistance and directory listings" in 47 U.S.C. §251(b)(3) to mean:

> . . . that the customers of all telecommunications service providers should be able to access each LEC's [DA] service and obtain a directory listing on a nondiscriminatory basis, notwithstanding (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.

FCC DP Order, ¶¶127, 130. This obligation applies to all LECs -- not just ILECs.[8] The FCC made it clear that nondiscriminatory access to directory assistance and directory listings -- for purposes of dialing parity -- are intertwined, and thus, "in permitting access to directory assistance, LECs bear the burden of ensuring that access is permitted only to the same information that is available to their own directory assistance customers." Id., ¶132.

In promulgating its dialing parity rules, the FCC noted several comments submitted by MCI. For example, the FCC noted that:

> MCI recommends that the [FCC] establish requirements that ensure that "each provider of local service has access to directory

[8]Obligations applicable to all LECs are set forth in 47 U.S.C. §251(b)(1)-(5), and include nondiscriminatory access to DA and directory listings, with no unreasonable dialing delays as part of the requirement to provide "dialing parity." Those obligations applicable to ILECs only are set forth in 47 U.S.C. §251(c)(1)-(6), and include the duty to provide nondiscriminatory access to network elements.

> listings of other providers, and that these directory listings are made available in readily usable format," and that these listings be provided 'via tape or other electronic means, as is frequently the practice today between incumbent LECs whose service areas join."

FCC DP Order, ¶136. Based on such comments, the FCC concluded:

> . . . that [47 U.S.C. §251(b)(3)] requires LECs to share subscriber listing information with their competitors, in "readily accessible" tape or electronic formats, and that such data be provided in a timely fashion upon request. The purpose of requiring "readily accessible" formats is to ensure that no LEC, either inadvertently or intentionally, provides subscriber listings in formats that would require the receiving carrier to expend significant resources to enter the information into its systems.

Id., ¶138 (emphasis added). The FCC's conclusion makes it clear that only subscriber listing information -- not all DA data -- must be provided in readily accessible tape or electronic format.

With respect to what the FCC meant in ¶140 of the FCC DP Order when it referred to the "more robust access to databases" required by 47 U.S.C. §251(c)(3), the Commission finds that this reference must be construed in light of the FCC's discussion of access to UNEs, generally, and operator services and directory assistance, in particular. In addressing what "access" to an UNE requires generally, the FCC wrote:

> We further conclude that "access" to an unbundled element refers to the means by which requesting carriers obtain an element's functionality in order to provide a telecommunications service. . . . We conclude, based on the terms of sections 251(c)(2), 251(c)(3) and 251(c)(6) that an incumbent LEC's duty to provide "access" constitutes a duty to provide a connection to a network element independent of any duty imposed by subsection (c)(2).[9]

FCC Interconnection Order, ¶269 (emphasis added). BA-WV satisfies its duty under 47 U.S.C. §251(c)(3) when it provides, on a nondiscriminatory basis, a connection to its DA database which allows MCI and other competitors to "dip into" its DA database for purposes of query and response.

With respect to access to operator services and directory assistance in particular, the FCC wrote:

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[9] 47 U.S.C. §251(c)(2) establishes an ILEC's duty to provide interconnection to its network to any requesting carrier. 47 U.S.C. §251(c)(6) imposes a duty upon ILEC's to allow requesting carriers to collocate equipment necessary to interconnect or obtain access to an ILEC's unbundled network elements.

> . . . incumbent LECs must provide access to databases as unbundled network elements. . . . In particular, the directory assistance database must be unbundled for access by requesting carriers. Such access must include both entry of the requesting carrier's information into the database, and the ability to read such a database, so as to enable requesting carriers to provide operator services and directory assistance concerning incumbent LEC customer information. We clarify, however, that the entry of a competitor's customer information into an incumbent LEC's directory assistance database can be mediated by the incumbent LEC to prevent unauthorized use of the database. We find that the arrangement ordered by the California Commission concerning the shared use of such a database by Pacific Bell and GTE is one possible method of providing such access.[10]

FCC Interconnection Order, ¶538 (emphasis added).

In light of the foregoing, all that "more robust access" to BA-WV's DA database requires is that, in addition to being provided a connection to BA-WV's DA database: (1) MCI can enter its customer information into BA-WV's DA database; and (2) MCI is able to read such a database in order to provide operator services and directory assistance concerning BA-WV's customer information. "More robust access" does not require BA-WV to provide, via "data dump," that database to MCI. The access BA-WV was required to provide in the Commission's May 16, 1997 order satisfies these requirements.

Having determined that BA-WV is not required to provide, via "data dump," its DA database to MCI, the remaining arguments made by MCI regarding BA-WV's lack of difficulty in providing such data becomes irrelevant.

C. Information Needed by Switch.

The issue here is whether BA-WV must provide MCI with a database listing of (1) street addresses within the service coverage area of each

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[10]The California commission decision referred to by the FCC required Pacific Bell and GTE to operate a joint DA database. See Re: GTE California, Inc., 31 C.P.U.C.2d 370 (Cal. P.U.C., March 22, 1989). In its comments to the FCC, MCI had argued that CLECs should be able to participate in similar-type arrangements with ILECs. FCC Interconnection Order, ¶532. The FCC's order makes it clear that requiring the sharing of DA databases is an option for state commissions -- it is by no means required. The Commission is not prepared, based on the record before it in this proceeding, to order BA-WV to operate its DA database jointly with MCI, or any other requesting carriers. With the advent of competition, and the ability of a myriad of carriers to provide local service, including directory assistance, the Commission is not prepared to make such a leap without a more thorough investigation.